IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 382 of 1999

in

COMPANY PETITIONNo 177 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHCHANDRA NATWARLAL DAVE

Versus

AMBALAL SARABHAI ENTERPRISES LTD.

Appearance:

MR KM PARIKH for Petitioner

NANAVATI ASSOCIATES for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. The applicant (original petitioner) has taken judges summons and prayed for following reliefs :

a. That this Hon'ble Court be pleased to revive the Company Petition No. 177/98, being petition for winding up against the Respondent Company for passing appropriate orders as prayed for in para 9 of the said Company Petition.

b. This Hon'ble Court be pleased to revive the Company Petition No. 177/98 in view of the order dated 13.8.1999 passed by Hon'ble Court (Coram : S.D.Dave,J), since Respondent Company have failed and neglected to make payment of the outstanding amount alongwith interest to the Petitioner by way of first instalment on 1.9.1999.

1.1 In support of the said judges summons, an affidavit was also filed on 23rd September, 1999. Along with said affidavit, the order of this Court on 13th August,1999 passed in main matter is also annexed. Para-3 of the said order of this Court reads as under :

"Now, there has been consensus between the counsels of the parties and their clients regarding the payment of the dues in question. It is agreed that now, the respondent-company in each of these petitions shall pay the principal amount claimed in the petitions alongwith interest as prescribed under the Payment of Gratuity Act under four equal monthly installments. The first instalment shall be paid on 1st September, 1999. The other remaining installments shall be paid in the first week of every succeeding month till the installments are duly paid."

2. It was stated that as per the order of this Court the respondent - company agreed to make payment to the petitioner the principle amount along with the interest in four equal monthly installments. The installments was due on 1st Septmeber,1999 and the respondent company has not paid installments as upon before the High Court on

13th August, 1999 and in view of the same the petitioner approached this Court by filing the present petition.

3. The respondent company has filed affidavit-in-reply dated 27th March,2000. In para-2 and para-3 it was stated that in view of the provisions of Gratuity Act the amount of ceiling of gratuity of Rs. 1,00,000/ prevailing and, therefore, the petitioner is not entitled to any gratuity more than Rs. 1,00,000/-. The para-6 reads as under :

I state and submit that as explained above respondent company was required make the following payments to the petitioner.

Gratuity : Rs. 99,469
Interest on Gratuity : Rs. 26,762
Add Amount as per Company's Scheme : Rs. 12,044
Total : Rs. 1,39,275

This has been paid to the petitioner as per the following details :

Sr. No.	Cheque No.	Date	Amount(Rs.)
1.	339105	12.10.1999	56,257
2.	339115	12.11.1999	28,128
3.	339121	13.12.1999	28,128
4.	339126	31.12.1999	26,762
		Total	1,39,275

and according whole amount has been paid to the petitioner. The rejoinder of the petitioner was also filed on 3rd April,2000. It was stated that actual amount of gratuity as admitted by respondent is Rs. 1,12,513/- and amount of interest on the principle amount to be paid by the respondent is as under :

Period by ASE	Date of Payment received	Amount for this period	Interest payable
21.2.97 to 11.10.99	12.10.1999	Rs. 56,257	Rs. 14,827-00

21.2.97 to 12.11.99	12.11.1999	Rs.28,,128	Rs. 7,652-00
21.2.97 to 13.12.99	13.12.1999	Rs. 28,128	Rs. 7,883-00
	Total Gratuity amount and interest	Rs.1,12,523	Rs. 30,362-00
	Interest paid by Cheque dated 31.12.99	Less	Rs. 26,762-00
	Difference (interest) payable	Rs. 3,600-00	
	Add interest for Jan. 2000 to March, 2000.		Rs. 1,080-00
	Balance total interest payable		Rs. 4,680-00

4. I have heard learned counsel for the petitioner as well the respondents at length. However, as the only amount of Rs. 3,600/- regarding difference of interest to be paid by the respondent company to the petitioner. I direct the respondent company to pay Rs. 3,600/- in full and final settlement towards all payment of Gratuity to the petitioner. The petitioner is not entitled to interest on the said amount from January,2000 to March,2000 In view of the above observations, I direct the respondent company to pay adhoac amount to the petitioner. The petition is dismissed.

(K.M.Mehta, J)

(Vipul)